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Attorney for James E. Salven, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
(FRESNO DIVISION)

In Re)	CASE NO. 05-10001-A-7F
)	
DDJ, INC.,)	CHAPTER 7
)	
Debtor.)	DC No. THA-6
)	
<u>DDJ, LLC,</u>)	CASE NO. 05-10002-A-7F
)	
Debtor.)	D.C. NO. THA-6
)	
)	DATE: November 2, 2010
)	TIME: 2:00 P.M.
)	DEPT: "A", COURTROOM 11
)	JUDGE: HON. WHITNEY RIMEL

MOTION FOR ORDER APPROVING SALE OF LITIGATION CLAIMS
PURSUANT TO 11 U.S.C. §363(b)

1. James E. Salven, the Chapter 7 Trustee for the
Estate of DDJ, Inc., and pursuant to the December 29, 2006
Settlement Agreement previously approved by this Court, as the
representative of the bankruptcy estate of DDJ, LLC, (collectively
"DDJ") respectfully represents as follows:

1 2. This is a motion to sell litigation claims of the
2 DDJ estates. These litigation claims include the estates'
3 interest in District Court action commonly known as Flores I
4 bearing Case No. CIV-F-99-5878; Flores II bearing Case No. CIV-F-
5 04-6405 and an action pending in the Superior Court of the State
6 of California, County of Fresno bearing Case No. 08-CE-CG-03585-
7 DSB captioned James E. Salven, et al., Plaintiffs vs. Dennis
8 Hagobian, et al., Defendants.

9 3. Jurisdiction exists under 28 U.S.C. § 1334. Venue
10 is proper under 28 U.S.C. § 1408. The District Court has
11 generally referred these matters to the Bankruptcy Court for
12 hearing pursuant to 28 U.S.C. § 157(a) and United States District
13 Court, Eastern District of California General Orders 182 and 223.
14 This is a core proceeding within the meaning of 28 U.S.C. §
15 157(b)(2)(A)(N)&(O). This is a motion brought pursuant to 11
16 U.S.C. §363(b). This is a contested matter under F.R.B.P. Rule
17 9014 and a motion brought pursuant to Local Rules of Practice for
18 the United States Bankruptcy Court, Eastern District of
19 California, LBR Rule 9014-1.

20 4. The DDJ Bankruptcy cases were filed on or about
21 January 2, 2005. Among the various assets of the estates were
22 litigation claims against the Hagobian Defendants and other
23 defendants as set forth in the state court action.

24 5. Henry D. Nunez, Esquire, was employed by the DDJ
25 Estates as special counsel to pursue any and all litigation claims
26 on behalf of DDJ. Mr. Salven, as the Chapter 7 Trustee of DDJ,
27 Inc., and as the representative, pursuant to the Settlement
28 Agreement referenced above, of the DDJ, LLC case, has considered

1 closing DDJ, Inc. and abandoning the litigation claims. However,
2 so as not to prejudice two particular creditors, Connie Flores and
3 Joe Flores, Mr. Salven has made a final offer to resolve their
4 concerns relative to the litigation claims.

5 6. On September 22, 2010, Mr. Salven conveyed a written
6 offer to resolve the litigation issues and concerns to Mr. and
7 Mrs. Flores. A true and correct copy of the September 22, 2010
8 correspondence offering to sell all litigation claims to the
9 Flores' or their designee is attached to the Declaration of James
10 E. Salven as Exhibit "A".

11 7. On October 4, 2010, Joe and Connie Flores accepted
12 the Offer to Resolve Issues re: the Chapter 7 Bankruptcy Estates
13 of DDJ, Inc. and DDJ, LLC with one proviso. That proviso was that
14 the sale amount be reduced to the first \$150,000.00 of any
15 proceeds collected on any judgment obtained by the Flores' and/or
16 their designee. A true and correct copy of Joe and Connie Flores'
17 October 4, 2010 acceptance letter accompanies James E. Salven's
18 declaration as Exhibit "B".

19 8. Following the September 22, 2010 offer by Mr. Salven
20 to sell the claims, discussions occurred between the Flores', Mr.
21 Nunez and Mr. Salven. A Conditional Counter Offer Acceptance was
22 sent by Mr. Salven to Mr. and Mrs. Flores and accompanies Mr.
23 Salven's declaration as Exhibit "C".

24 9. Based upon these letters, James E. Salven as the
25 Trustee of DDJ, Inc. and as the representative of DDJ, LLC in
26 respect to the litigation claims, respectfully requests that this
27 Court approve the sale of all litigation claims to CBP4Justice,
28 LLC. In exchange for the payment of the first \$150,000.00 of any

1 proceeds collected on any judgment obtained in any litigation,
2 Connie Flores and Joe Flores and Henry D. Nunez will be deemed to
3 have withdrawn all claims filed in DDJ, Inc. and DDJ, LLC.

4 10. Further, with regard to Mr. Nunez, it is agreed
5 between the Flores', Henry D. Nunez and James E. Salven on behalf
6 of DDJ, that Mr. Nunez may receive compensation subject to this
7 Court's approval in an amount limited to \$5,000.00. Any
8 additional compensation will be as and between the parties and
9 outside of the bankruptcy estates.

10 11. Further, pursuant to the terms of the sale, the
11 first \$150,000.00 of any proceeds collected resulting from any and
12 all litigation being sold to CBP4Justice, LLC, and/or its designee
13 shall be property of the two bankruptcy estates and shall be
14 apportioned as contemplated under the September 5, 2007 Settlement
15 Agreement bearing Docket Control No. THA-5.

16 12. As of this date, the claims in DDJ, LLC approximate
17 \$11,116.00. The claims in DDJ, Inc. approximate \$31,753.00. The
18 administrative claim of Jeffrey L. Wall is capped in the amount of
19 \$29,277.50 pursuant to the Settlement Agreement filed with this
20 Court September 5, 2007. The administrative claim of Thomas H.
21 Armstrong, general counsel in DDJ, Inc., approximates \$30,000.00
22 as of this date. After the payment of all allowed claims in DDJ,
23 LLC and DDJ, Inc., the Trustees' fees and costs in the respective
24 cases and the attorneys' fees and costs incurred for the
25 respective estates, any surplus will be remitted and returned to
26 CBP4Justice, LLC or its designee.

27 13. 11 U.S.C. Section 363(b)(1) provides that the
28 Trustee, after notice and a hearing, may sell, other than in the

1 ordinary course of business, property of the estate. In this
2 instance, the Trustee seeks to sell the litigation claims to
3 CBP4Justice, LLC on the conditions set forth above. The Trustee
4 has evaluated the claims and believes that the cost of litigation
5 could be significant and the delay attendant thereto substantial
6 such that sale of the claims at this juncture is in the best
7 interests of the estates and the creditors of the estates.

8 14. Based upon the foregoing James E. Salven
9 respectfully requests that this Court approve the sale of the
10 litigation set forth above; that should the Court approve the sale
11 of the litigation claims, that a copy of the order be lodged or
12 filed in the Superior Court of the State of California, County of
13 Fresno, action bearing Case No. 08-CE-CG-03585-DSB; and for such
14 further relief as this Court deems appropriate.

15
16 Dated: October 18, 2010



Thomas H. Armstrong
Attorney for James E. Salven,
Chapter 7 Trustee for the
Estate of DDJ, Inc.